IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

R.S.A. No. 194 of 2006.

Judgement reserved on:

Date of decision : May 4, 2006.

Rattan Lal …….. Appellant.

Versus

Alaxander ……. Respondent.

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

Whether approved for reporting?

For the appellant: Mr. R.K.Gautam, Sr. Advocate with Mr. Naveen Bhardwaj, Advocate.

For the respondent:

Surjit Singh J. (Oral).

Heard. Respondent Alaxander, hereinafter referred to as plaintiff, filed a suit against the present appellant, seeking a declaration that he was joint owner to the extent of 3 Biswas of land bearing Khasra No. 954/831/784/125, which was sold to his mother by Shiv Lal and also sought issuance of permanent prohibitory injunction, restraining the appellant- defendant from interfering in his possession. Appellant- defendant, Rattan Lal, filed a cross suit, seeking a declaration that he was owner in possession of 14 Biswas area, out of khasra No. 954/831/784/125, and also sought

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Whether reporters of local Papers may be allowed to see the judgment?

an injunction, restraining the respondent- plaintiff from causing any interference in his possession over 14 Biswas area.

Relevant facts may be stated thus. One Shiv Lal was owner in possession of land measuring 1 Bigha 9 Biswas bearing khasra No. 954/831/784/125. Out of this area, he sold 3 Biswas area to the mother of respondent Alaxander, in the year 1976, through a sale-deed. In January, 1978, 15 Biswas area out of the aforesaid khasra number was acquired by the State Government. The entire compensation amount was received by Shiv Lal. In May, 1978, Shiv Lal, made a gift in respect of the remaining area of the aforesaid khasra number. In the year 1983, Smt. Dropti made a sale in favour of the appellant- defendant Rattan Lal with regard to the area that was gifted to her and in the sale-deed the extent of the area was written as 14 Biswas. Mutation was also attested with regard to 14 Biswas of area in favour of Rattan Lal. As a matter of fact, after the sale of 3 Biswas area was made in favour of Alaxander's mother and 15 Biswas area had been acquired by the State Government, only 11 Biswas area had been left with Shiv Lal, and therefore, the gift was to be treated only in respect of 11 Biswas area.

The trial court returned the finding that what the defendant had purchased was only 11 Biswas area and remaining 3 Biswas area belongs to Alaxander- respondent, who stepped into the shoes of his mother. Consequently, suit filed by Alaxander- respondent was decreed and the one filed by the appellant- defendant was dismissed by a common judgement.

Appeals preferred by the appellant against the decree of dismissal of his own suit and the decreeing of the suit of the respondent, stand dismissed by the District Judge. Now the defendant has come in appeal to this Court.

Learned counsel representing the appellant submits that sale made in favour of the mother of Alaxander had not been given effect to in the revenue papers and that in fact neither the mother of respondent nor the respondent himself had ever been in possession of any portion of the suit land. According to him, the fact that the respondent or his mother never came in possession and the sale was not given effect to in the revenue papers are enough to divest the respondent- plaintiff of his title to the suit property. The argument is without any merit. Alaxander's mother by purchasing 3 Biswas area out of a khasra number, having much larger area, became a co-owner, and therefore, her being or not being in physical possession of any portion of the khasra number, out of which she purchased the area, is irrelevant. When a person is a co-owner of certain property, he or she is to be presumed to be in constructive possession alongwith other co-owner, because in such a situation, the possession of other co-owners is not only for themselves, but also on behalf of the co-owners out of possession, as their trustees.

Further contention that the entries were not made in the revenue papers on the basis of the sale in favour of the mother of Alaxander, is also without merit. Omission of entries in the revenue papers, do not take away the title of the person, whose title is otherwise lawful and valid.

For the foregoing reasons, the appeal is dismissed.

CMP No. 280 of 2006.

In view of the dismissal of the main appeal, this application is also dismissed.

May 4, 2006 **(Surjit Singh),**
(Hem) **Judge.**